

Lamoine Board of Appeals

Questions to Guide Discussion with Legal Counsel

On Implications of Developments Following October 29, 2019 Board Determination in the Moldawer v. CEO Appeal

January 22, 2020

1. Is the outcome of the CEO's redetermination, in which she chose not to follow the Appeals Board decision, subject to appeal as separate case?

2. What is the significance of the decisions of the Board of Appeals in relation to subsequent potential rulings by the courts?

Elaboration: If a proper, lawful and accurate decision was given by the Board of Appeals, and that decision was ignored, leading the issue to find its way to the courts, would it be likely for the courts to support and enforce the decision of the Board of Appeals?

3. Does the Board of Appeals set precedent, or permanently clarify or codify the language of an ordinance when it makes a determination?

Elaboration: During deliberations of the Moldawer appeal, some felt that the language used in the Building Height definition of the BLUO (building and land use ordinance) was unclear and could be understood in two different ways. The Board of Appeals in its first motion stated that the CEO erred in her application of the BLUO by not taking into consideration both the finished and original elevations of grade in her height calculations. Therefore, does the clarified definition of Building Height in the BLUO become the standard that must be applied in any reconsideration of the current issue and subsequent practice by the CEO in any building height assessment?

4. What is the responsibility of the CEO to comply with determinations made by the Board of Appeals?

5. Can the determinations of the Board of Appeals be disregarded by a CEO, when the CEO is reconsidering the issues remanded to them?

6. What role, if any, does the language of MUBEC play in decisions related to building and land use issues in Lamoine?

Elaboration: The Town of Lamoine has not formally adopted MUBEC, and the Town is not compelled to adopt MUBEC as per my reading of Section 4 paragraph 3 of the document linked here: https://www.maine.gov/dps/bbcs/documents/FINAL2MUBEC_Ch_12018.pdf.

7. If MUBEC plays a part in building and land use issues in Lamoine. Does the Lamoine BLUO supersede MUBEC if the language on any given issue is more restrictive?

8. Can the Board of Appeals send decisions and recommendations directly to the Board of Selectmen, or must they be forwarded to the CEO?